

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8180 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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SURYAKANT BABURAO CHIKHLE

Versus

LIC

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Appearance:

MR TR MISHRA for Petitioner

MR AK CLERK for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/08/1999

ORAL JUDGEMENT

#. Rule. Mr.Clerk waives service of Rule on behalf of  
respondent. The matter is taken up for hearing today as  
agreed by the learned counsel for the parties.

#. Heard the learned counsel for the parties.

#. After holding departmental inquiry against the

petitioner, an employee of the respondent-Corporation, he was dismissed from services with effect from 31st May 1983. This action of respondent has been challenged by petitioner before this Court in Special Civil Application No.3425 of 1983 which came to be disposed of on 2.12.96 with directions to the petitioner to file appeal before the appellate authority and it is further ordered that in case the appeal is filed within one month from the date of the order, the same may not be dismissed on the ground of limitation. Interim relief which was operating in favour of petitioner was ordered to be continued till decision of the appeal. The petitioner filed appeal which was late by few days and the same was came to be dismissed only on the ground of limitation. Hence this Special Civil Application before this Court. The order of appellate authority as well as the order of dismissal of the petitioner from services passed by disciplinary authority are challenged by this Special Civil Application. After dismissal of appeal, the petitioner is not in service.

#. The learned counsel for the respondent though with all vehemence at his command, contended that it is a case where the petitioner has rightly been dismissed from services and no further indulgence may be granted to him.

#. The Court has earlier directed the appellate authority to decide the appeal on merits in case it is filed within one month from the date of order. That has not been done and I do not find any fault with the appellate authority to dismiss the appeal on the ground of limitation. However, it is a matter of dismissal of the petitioner from services who is in category of sub-staff Peon and earlier writ petition has not been entertained as he has alternate remedy against the order of disciplinary authority. It is in the larger interest of both the parties that appeal may be decided on merits. I find sufficient merits in the contention of the learned counsel for the respondent that otherwise also, this writ petition is misconceived as the petitioner has remedy of raising industrial dispute before the Labour Court or Industrial Tribunal, as the case may be and in case industrial dispute is raised, the respondent has much wider defence available than what it is available here to it in this proceeding. Even where the inquiry was found to be defective, the respondent has right to prove the charges against the petitioner before the Labour Court and in case where it is proved, the dismissal order will relate back to the original order of dismissal of petitioner from services.

#. In the result, the order of the appellate authority communicated to the petitioner vide communication dated 9.12.97 is quashed and set aside and the appellate authority is directed to decide the appeal of the petitioner on merits in accordance with law. Rule stands disposed of accordingly. No order as to costs.

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[sunil]